

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 4284	DATE	2/25/2004
CASE TITLE	MARLENE E. WILLIS-MCKANE vs. COOK COUNTY SHERIFF'S DEPT.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

MEMORANDUM OPINION AND ORDER

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due ____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due ____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Opinion And Order. Defendants' motions to dismiss are granted. All pending motions and dates are moot. Case is dismissed.

- (11) ☒ [For further detail see order attached to the original minute order.]

No notices required, advised in open court.	<div style="text-align: center;"> 18000 JCNLSIG 1010 2004 FEB 26 10:10 AM U.S. DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS </div>	number of notices	<div style="text-align: center;"> Document Number 32 </div>
No notices required.		FEB 26 2004 date docketed	
Notices mailed by judge's staff.		doctking deputy initials <i>[Signature]</i>	
Notified counsel by telephone.		date mailed notice	
<input checked="" type="checkbox"/> Docketing to mail notices.		mailing deputy initials	
<input checked="" type="checkbox"/> Mail AO 450 form.	Date/time received in central Clerk's Office		
Copy to judge/magistrate judge.			
LG	courtroom deputy's initials		

been stayed, defendants forcibly entered the house, removed her from the property and changed the locks on the house. In the process of the eviction, Willis-McKane was arrested after defendants found an unregistered handgun in the house.

Plaintiff Willis-McKane filed this action alleging that defendants violated her civil rights in executing the court order. Count I alleges a violation of Illinois law concerning post-judgment motions, 735 ILCS 5/2-1203 and Counts II and III allege violations of 42 U.S.C. §§ 1983 and 1985. Plaintiff also sought to remove the foreclosure action to federal court. *See Washington Mutual Bank, FA v. Willis-McKane*, No. 03 C 4285. Judge Guzman granted Washington Mutual's motion to remand that case and the Seventh Circuit dismissed plaintiff's appeal of that decision for lack of jurisdiction.

DISCUSSION

In deciding a Rule 12(b)(6) motion to dismiss we must assume the truth of all well-pleaded allegations, making all inferences in the plaintiff's favor. Sidney S. Arst Co. v. Pipefitters Welfare Educ. Fund, 25 F.3d 417, 420 (7th Cir. 1994). The court should dismiss a claim only if it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). While the complaint does not need to provide the correct legal theory to withstand a Rule 12(b)(6) motion, it must allege all of the elements necessary to recover. Ellsworth v. City of Racine, 774 F.2d 182, 184 (7th Cir. 1985), *cert. denied*, 475 U.S. 1047 (1986).

In Illinois, a defendant cannot be sued unless it has a legal existence. Jackson v. Village of Rosemont, 536 N.E.2d 720, 723 (Ill. App. 1st Dist. 1988). The Cook County sheriff's department has no such existence, operating solely as a division of the sheriff of Cook County.

Conway v. Cook County, 1999 WL 14497 (N.D. Ill. 1999). The sheriff's department is therefore not a proper party to this action and must be dismissed. Though the sheriff's deputies may be individually answerable for civil rights violations, plaintiff names no such defendants. Likewise, she does not allege that her damages were the result of an official policy or custom of the sheriff, thereby failing to state a claim against the sheriff under Monell v. Department of Social Services of City of New York, 436 U.S. 658 (1977).


Plaintiff also fails to state a claim against Washington Mutual. The Rooker-Feldman doctrine prevents a party from using the lower federal courts to effectively review a state court ruling. See Rooker v. Fidelity Trust Co., 263 U.S. 413; District of Columbia Court of Appeals v. Feldman, 460 U.S. 462; Epps v. Creditnet, Inc., 320 F.3d 756 (7th Cir. 2003). In bringing this action against Washington Mutual, that is exactly what plaintiff seeks to do. In evicting her from the property, defendants acted in accordance with a state court order, which we are not allowed to review.

For the same reason, plaintiff does not state a claim against defendants George Vlasis or George Vlasis Realtors. These defendants, like Washington Mutual, were authorized to evict the plaintiff and change the locks on the house. Though it would be possible for Vlasis to enter into a conspiracy with state officials to deprive Willis-McKane of her civil rights (actionable under section 1985), plaintiff makes no such allegations.

CONCLUSION

For the foregoing reasons, defendants' motions to dismiss are granted.

Feb. 25, 2004.


JAMES B. MORAN
Senior Judge, U. S. District Court